

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY**

LINCOLN BEAUREGARD,  
Plaintiff,  
vs.  
WASHINGTON STATE BAR  
ASSOCIATION,  
Defendant.

NO. 19-2-08028-1 SEA

**ORDER ON MOTION FOR  
PRELIMINARY INJUNCTION**

**WASHINGTON STATE BAR  
ASSOCIATION.**

**Defendant.**

The above entitled court having read Plaintiff's Motion, Defendant's Response, Plaintiff's Reply, and several Surreplies, along with declarations and exhibits attached thereto, the Court hereby issues the following decision and order:

## BACKGROUND

Plaintiff filed this lawsuit against the Washington State Bar Association (WSBA) seeking equitable relief. Plaintiff seeks the reinstatement of non-party Paula Littlewood as Executive Director of the WSBA. The instant motion seeks preliminary injunctive relief pursuant to CR 65 – the reinstatement of Ms. Littlewood and maintenance of that status quo during the pendency of this lawsuit.

The questions are these: (1) Does this Court have jurisdiction to decide a case where an individual is suing the WSBA for the manner in which it governs its own internal hiring and

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1 firing?; (2) Is the WSBA a public agency, and therefore subject to the Open Public Meetings  
2 Act?; and (3) If the answer to the first two questions is yes, has the Plaintiff established the  
3 three prong test for a preliminary injunction under CR 65?; and (4) If so, what equitable  
4 remedy is appropriate?

5       The Court's decision on these issues is not a commentary on the efficacy of firing Ms.  
6 Littlewood. This decision focuses solely on whether the Court has jurisdiction, whether the  
7 WSBA Board of Governors (BOG) was required to comply with the Open Public Meetings Act  
8 (OPMA), whether Plaintiff has been substantially injured by the WSBA BOG's actions, and if  
9 so what to do about it.

10       As both sides made abundantly clear during oral argument, these questions are novel  
11 as they relate to bar business. Hence, whatever this Court decides will likely be reviewed by  
12 the Washington State Supreme Court. Should either party wish to certify this Order for direct  
13 review by the Supreme Court, this Court will immediately sign whatever findings are  
14 necessary.

## 16                   FACTS

17       The WSBA itself has used its website to describe the history of the organization:

18       The Washington Bar Association was formed in January 1888,  
19 during the final year of the Washington Territory. In those days, all  
20 lawyers who had cases set for argument before the Washington  
21 Supreme Court were required to be present at the beginning of  
22 the Court term in January. Sometimes lawyers were required to  
23 wait for days or weeks for their cases to be called on the calendar.  
24 In this setting, a group of lawyers met in the Supreme Court  
25 chambers in Olympia and decided to form the Washington Bar  
26 Association. The name was changed to the Washington State Bar  
Association in 1890.

The association originally consisted of 35 lawyers, and  
membership cost \$5 per year. At that time, it was a purely  
voluntary organization and did not include all lawyers admitted to

1 practice. By 1930, as more lawyers were admitted to practice, it  
2 was proposed that the association have a more formal structure.  
<https://www.wsba.org/about-wsba/who-we-are/history-of-the-wsba>.

3 The legislature formalized the WSBA in 1933 via the State Bar Act. RCW 2.48.010.

4 The statute authorizes creation of the WSBA and delineates its powers. RCW 2.48.010. It  
5 states:

6 There is hereby created as an agency of the state . . . the  
7 Washington State Bar Association . . . , which association shall  
8 have a common seal and may sue and be sued, and which may,  
9 for the purpose of carrying into effect and promoting the objects of  
10 said association, enter into contracts and acquire, hold, encumber  
and dispose of such real and personal property as is necessary  
thereto.

11 RCW 2.48.010 (emphasis supplied).

12 Fifty-four years later, in 1987, the Washington State Supreme Court promulgated rules  
13 related to the WSBA. GR 12.2. Pursuant to the authorizing statute, the Supreme Court's  
14 general rules, as well as the WSBA bylaws ("the bylaws"), decisions of the Bar are made by  
15 an elected group of officers known as the Board of Governors ("BOG"). The BOG,  
16 "possesses all power and discretion on all matters concerning the WSBA." Declaration of  
17 Lincoln Beauregard, Exhibit 8, (*WSBA Bylaws Section IV(A)*). The BOG selects the WSBA's  
18 Executive Director ("ED") and annually reviews the Executive Director's performance.  
19 Declaration of Lincoln Beauregard, Exhibit 8, (*WSBA Bylaws Section IV(A)(2)(b)*).

20 The ED is responsible for the day-to-day operations of the Bar including hiring,  
21 managing and terminating Bar personnel, negotiating contracts, communicating with Bar  
22 members, the judiciary, elected officials, and the community, preparing a budget, managing  
23 the books, collecting debts, and many other duties. Declaration of Lincoln Beauregard,  
24 Exhibit 8, (*WSBA Bylaws, Article IV(B)(7)(b)*). For the past 12 years, the Executive Director

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1 of the WSBA was Paula Littlewood. She was terminated by a majority vote of the BOG, and  
2 left her position on March 31, 2019.

3 There was minimal explanation given for Ms. Littlewood's firing, other than the BOG  
4 wanted to move, "in a different direction." Declaration of Lincoln Beauregard, Exhibit 9. Ms.  
5 Littlewood's termination was met with controversy within the Bar. The President of the Bar  
6 Foundation resigned in protest. Members of the staff at the WSBA wrote letters of protest. A  
7 minority of Supreme Court justices expressed concern about the manner in which this  
8 decision was made. There is some evidence that, after the firing, members of the BOG met  
9 with members of the Washington State Supreme Court to discuss the termination decision.  
10 No change to the decision has resulted from this meeting. No information about the manner  
11 or purpose of that BOG/Supreme Court meeting has been provided to this Court as part of  
12 the instant lawsuit.

14 Plaintiff, a member of the WSBA, filed this lawsuit seeking to enjoin Ms. Littlewood's  
15 firing. He argues that, as a member of the WSBA and a member of the public, he has  
16 standing to sue the WSBA BOG for their alleged violation of the Open Public Meetings Act.  
17 He argues that a group of BOG members engaged in backroom dealing and horsetrading to  
18 produce the termination of Ms. Littlewood, and claims that he has been injured by this action.  
19 He argues that the merits of the lawsuit favor him, and thus the Court should enjoin the firing,  
20 maintain the status quo, and allow the parties to litigate this issue.

22 Defendant disagrees. They argue that this Court has no jurisdiction to hear the case.  
23 They argue that the BOG's decision was not subject to the Open Public Meetings Act, as  
24 they are not a public agency. They argue that, even if there is jurisdiction and the BOG was  
25

1 subject to the Open Public Meetings Act, Plaintiff cannot prevail on the merits in a Motion for  
2 Preliminary Injunction.

3

4 **ANALYSIS**

5 **THE COURT HAS JURISDICTION TO HEAR THE MATTER**

6 The legislature's language in creating our state bar association reads:

7

8 There is hereby created as an agency of the state . . . the  
9 Washington State Bar Association . . . , which association shall  
have a common seal ***and may sue and be sued***, and which may,  
10 for the purpose of carrying into effect and promoting the objects of  
said association, enter into contracts and acquire, hold, encumber  
and dispose of such real and personal property as is necessary  
11 thereto.

12 RCW 2.48.010 (emphasis supplied).

13 The term, "may sue and be sued," means what it says. The phrase is used in many  
14 state statutes, and courts have consistently held that it means an entity can be sued. See,  
15 e.g., Arnold v. National Union of Marine Cooks & Stewards Ass'n, 42 Wash.2d 648, 257  
16 P.2d 629 (1953) (labor unions may sue and be sued); Daniel v. Gold Hill Min. Co., et. al., 28  
17 Wash. 411 (1902) (foreign corporations); Columbia Bldg. Co. v. National Sur. Co., 194  
18 Wash. 51, 76 P.2d 1027 (1938) (dissolved corporations).

19

20 For purposes of jurisdiction then, the question is whether the WSBA can be sued in  
21 equity in King County Superior Court, or must Plaintiff directly petition the Supreme Court.  
22 Defendant argues that the Supreme Court has plenary authority over the WSBA and its  
23 functions, and thus the only place one can sue the WSBA is in the Supreme Court. GR 12.2.  
24 They argue that WSBA bylaws provide sweeping discretion and power to the BOG, and  
25 provide no authority to sue them in the Superior Court.

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1        This reading of GR 12.2 and RCW 2.48.010 is unnecessarily narrow. Undoubtedly  
2        the Supreme Court has exclusive jurisdiction in relation to the attorney discipline system and  
3        rulemaking within the WSBA. RCW 2.48.060. “The ... board of governors shall ... have  
4        power ... to adopt rules, subject to the approval of the supreme court.” RCW 2.48.060.  
5        Moreover, the board has power to, “fix[] the qualifications, requirements and procedure for  
6        admission to the practice of law ... and ... enforce rules of professional conduct for all  
7        members of the state bar ... and, to investigate, prosecute and hear all causes involving  
8        discipline, disbarment, suspension or reinstatement, and make recommendations thereon to  
9        the supreme court.” RCW 2.48.060.

11       The statute does not similarly vest in the Supreme Court exclusive original jurisdiction  
12      to hear basic employment cases sounding in tort, nor cases in equity related to those same  
13      employment principles. Plenary authority means, “full, entire, complete, perfect, unqualified,”  
14      authority. State v. Blue Cross and Blue Shield, 203 W.Va. 690 (1998). It does not  
15      necessarily mean “exclusive,” authority. Secretary, Agency of Natural Resources v. Upper  
16      Valley Res. Landfill, 167 Vt. 228, 705 A.2d 1001 (1997).

18       Nobody should read this court’s jurisdictional decision to take away the Supreme  
19      Court’s authority to hear this matter. In fact, mechanisms exist to petition the Supreme Court  
20      directly regarding this matter. In State ex. rel. New Washington Oyster Co., Inc. v. Meakim  
21      et. al., 34 Wn.2d 131 (1949) (discussion of writs of certiorari and writs of quo warranto).

22       A mechanism also exists for the superior court to hear the matter. The superior court  
23      shall have original jurisdiction in all cases in equity so long as jurisdiction has not been  
24      vested exclusively in some other court. RCW 2.08.010. This is a matter in equity. While the  
25      Supreme Court maintains plenary authority over the WSBA, this has not historically meant  
26

1 that one cannot sue the WSBA in superior court. In Eugster v. Washington State Bar  
2 Association, 198 Wash.App. 758, 770, 397 P.3d 131 (Div III, 2017), Mr. Eugster challenged  
3 his previous bar discipline by filing an equitable claim against the WSBA in superior court.  
4 The WSBA challenged the jurisdiction of the claim. Id. The WSBA argued that the  
5 Constitution and the ELCs vested exclusive jurisdiction in the Washington Supreme Court for  
6 challenges to the lawyer disciplinary system. Id., at 774. The trial court agreed and  
7 dismissed the claims for lack of subject matter jurisdiction. Id.

8       The Court of Appeals, however, disagreed. Id., at 775. They disagreed despite Mr.  
9 Eugster's case relating much more closely than the current matter to the Supreme Court's  
10 exclusive jurisdiction over, "[the administration of] lawyer discipline and . . . [the] power to  
11 maintain appropriate standards of professional conduct and to dispose of individual cases of  
12 lawyer discipline and disability." Id., *citing*, Wash. Const. art. IV, § 1 and ELC 2.1.

13       Because the superior court was specifically granted jurisdiction to hear the particular  
14 type of case brought by Mr. Eugster, it was authorized to act even in the face of Article IV,  
15 Section 1 of the Washington State Constitution and Section 2.1 of the ELC. Id. A court  
16 possesses subject matter jurisdiction when it holds authority to adjudicate the type of  
17 controversy involved in the action. Id., at 775, *citing*, In re Marriage of McDermott, 175  
18 Wash.App. 467, 480-81, 307 P.3d 717 (2013). Other entities have also sued, and been sued  
19 by, the WSBA in Superior Court. See, e.g., Washington State Bar Ass'n v. Great Western  
20 Union Federal Sav. and Loan Ass'n, 91 Wash.2d 48, 586 P.2d 870 (1978) (WSBA sues for  
21 declaratory judgment related to parameters of the practice of law in Superior Court); Blinka v.  
22 Washington State Bar Ass'n, 109 Wash.App. 575, 36 P.3d 1094 (Div. I, 2001) (Plaintiff sued  
23 WSBA in Superior Court for employment discrimination and retaliation); Washington State  
24  
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1       Bar Ass'n v. Washington Ass'n of Realtors, 41 Wash.2d 697, 251 P.2d 619 (1952) (WSBA  
2       sued Washington Association of Realtors in Superior Court seeking decree regarding limits  
3       of realtors' ability to practice in legal arena); Wilson v. Board of Governors, Washington State  
4       Bar Ass'n, 90 Wash.2d 649, 585 P.2d 136 (1978) (Plaintiff sued WSBA BOG in superior  
5       court, seeking admission to practice); Benjamin v. Washington State Bar Ass'n, 138 Wash.2d  
6       506, 980 P.2d 742 (1999) (WSBA employee sued WSBA in superior court for employment  
7       discrimination). This is not an exhaustive list.  
8

9              The Supreme Court's authority to oversee the operation of an organization is not the  
10       same as vesting in the Supreme Court exclusive equitable jurisdiction over legal challenges  
11       to all of the decisions of that body. Because Plaintiff has filed a case in equity, and because  
12       superior courts maintain original jurisdiction for cases in equity where exclusive jurisdiction is  
13       not vested elsewhere, this court has jurisdiction to decide this matter.

14       **THE WSBA IS SUBJECT TO THE OPEN PUBLIC MEETINGS ACT ("OPMA")**

15              Plaintiff's Complaint primarily alleges he is damaged because Defendant fired their ED  
16       by secret vote or secret ballot, which violates the OPMA. He argues that the OPMA allows  
17       anyone to challenge an agency action occurring in violation of the OPMA. Defendant argues  
18       that the WSBA is not a public agency and therefore is not subject to the OPMA.  
19

20              All meetings of the governing body of a public agency shall be open and public and all  
21       persons shall be permitted to attend any meeting of the governing body of a public agency.  
22       RCW 42.30.030. The OPMA defines "public agency" as "any state board, commission,  
23       committee, department, educational institution or other state agency which is created by or  
24       pursuant to statute, other than courts and the legislature. RCW 42.30.020(1)(a).  
25  
26

1       For purposes of this lawsuit, to be a "public agency," an entity must (1) be created by  
2 statute; (2) be a state board, commission, committee, department, educational institution or  
3 *other state agency*; and (3) not be the court or legislature. Both sides agree the WSBA was  
4 created by statute. They quarrel about whether it constitutes a state agency and, if it does,  
5 whether it is "a court."

6                  THE WSBA IS A STATE AGENCY

7        "There is hereby created as ***an agency of the state***, for the purpose and with the  
8 powers hereinafter set forth, an association to be known as the Washington State Bar  
9 Association." RCW 2.48.010. If a statute's meaning is plain on its face, then the court must  
10 give effect to that plain meaning as an expression of legislative intent. State, Dept. of  
11 Ecology v. Campbell & Gwinn, L.L.C., 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002), *citing*, State v.  
12 J.M., 144 Wash.2d at 480, 28 P.3d 720 (2001). While the Supreme Court has subsequently  
13 passed rules related to the WSBA, nothing in those rules change the basic composition or  
14 purpose of the WSBA. GR 12, et. seq. The rules make clear that the Supreme Court has  
15 plenary authority over the WSBA, but does not change the make-up, purpose, or position of  
16 the WSBA.

17       Any argument that the WSBA is not a "state agency" also ignores the manner in which  
18 the legal community has viewed the Bar throughout its history, and apparently how the Bar  
19 and the Supreme Court views the Bar. The Supreme Court's full case caption for Benjamin,  
20 supra, reads: Dr. G. Andrew H. Benjamin, Appellant, v. Washington State Bar Association,  
21 an Agency of the State of Washington, Respondent. (Emphasis Supplied).

22       This Court is aware that in several contexts, the Supreme Court has declined to  
23 designate the WSBA as a public agency or a public employer. The Washington State Bar

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1      Association v. State, 125 Wn.2d 901, 890 P.2d 1047 (1995). These cases have arisen  
2      pursuant to specific enactments of the legislature and the Supreme Court. For instance, in  
3      WSBA v. State, *supra*, the legislature and the Supreme Court produced dueling enactments  
4      – a Supreme Court rule and a legislative statute. The statute designated employees of the  
5      WSBA public employees subject to collective bargaining. The rule gave the BOG the  
6      discretion to so designate. When asked to determine which enactment applied, the court  
7      acknowledged a separation of powers issue and held that the court's rule would delineate the  
8      status of the WSBA's employees. In the present case, the statute is different, the context is  
9      different, the purpose of the statute is different, and no competing judicial enactment exists.  
10

11         Similarly, in Matter of Washington State Bar Ass'n, 86 Wash.2d 624, 548 P.2d 310,  
12      the Washington State Auditor attempted to conduct a pre-audit of the WSBA's books. The  
13      WSBA declined, and a lawsuit ensued. The WSBA argued they were not a public agency as  
14      it is defined in RCW 43.09.290, the Agency Audits Statute. Id., at 625-6. The Supreme court  
15      agreed.  
16

17         The statute at issue in Matter of Washington State Bar Ass'n is substantially different  
18      than the definition of public agency in the Open Public Meetings Act. RCW 43.09.290 (i.e.,  
19      among other things, the definition includes use of public funds). The OPMA is simpler,  
20      requires less, and is related simply to whether the business of the WSBA should be available  
21      to the public (including the over 40,000 legal professionals working in the State of  
22      Washington whose work it regulates).

23         The OPMA must be construed liberally, unlike the Agency Audits Statute. See, West  
24      v. State, Washington Ass'n of County Officials, 162 Wash.App. 120, 132, 252 P.3d 406 (Div.  
25      II, 2011) (WACO is a public agency). A "state agency" may be an association or organization  
26

1 created by or pursuant to statute which serves a statewide public function. Id; See also,  
2 Mead School District No. 354 v. Mead Education Association, 85 Wash.2d 140 (1975)  
3 (School districts are public agencies under the OPMA). The WSBA qualifies.

4       The Attorney General's Office came to the same conclusion 46 years ago. AGLO  
5 1971 No. 103 (not official) at 2. While some of the actions of the bar association, particularly  
6 in the areas of admission and disbarment must be in accordance with rules adopted by the  
7 state supreme court (see, RCW 2.48.060), that relationship does not make the bar a part of  
8 the courts. Id., at 3. The opinion further states:

9       The state bar act provides that the bar association shall be  
10 governed by the board of governors, which is charged with the  
11 executive functions of the association and the enforcement of the  
12 provisions of RCW 2.48.010-2.48.180. (RCW 2.48.040.) The  
13 board of governors itself consists of one member from each  
14 Congressional district and a president who is an ex officio  
15 member (RCW 2.48.030). The board of governors of the  
16 Washington State Bar Association, consisting of eight members,  
17 including the president, is thus clearly a "governing body" as  
18 defined in the open meetings act (§ 2, chapter 250, Laws of 1971,  
19 1st Ex. Sess.). It is therefore clear that the new public meetings  
20 act applies to the board of governors of the Washington State  
21 Bar Association.

22       This opinion, while not binding on this court, is persuasive. The WSBA BOG has been on  
23 notice since 1971 – since the creation of the OPMA - that its meetings and decisions are  
24 likely subject to the Act. The AGO also made a distinction between the application of the  
25 statute to the work of the BOG, and the application of the statute to matters such as  
26 disciplinary investigations. This distinction is pragmatic and consistent with the purposes of  
the OPMA.

27       This AGO opinion is supported not only by a plain reading of the statute, but also by  
28 what the WSBA actually does. The WSBA is answerable to more than just the members it

1 serves. It is an agency that enforces rules that affect the general public every day. The  
2 WSBA accepts and investigates complaints from members of the public about the lawyers  
3 with whom they work. The WSBA makes decisions about whether to pursue those claims  
4 and seek disciplinary action against its members. Disciplinary actions potentially have a  
5 significant impact on both the accused lawyer and the accusing member of the public.  
6 Questions about who runs this organization, how it is run, and how it engages in its  
7 decisionmaking process are questions in the public sphere. The WSBA promotes the  
8 importance of lawyers in the community, and advances the interests of lawyers throughout  
9 the state. The WSBA is not some internal private industry overseer, and the vast majority of  
10 people who did the hard work to become a lawyer would chafe at such a definition of the Bar  
11 they worked so hard to join. As with everything that occurs in the legal profession, the WSBA  
12 is accountable to the public it serves.

14       The WSBA offers a myriad of services to the public, including those advertised on its  
15 website. See, <https://www.wsba.org/>. The WSBA makes its members available for public  
16 speaking engagements. <https://www.wsba.org/for-the-public/public-home/request-a-speaker>.  
17 It provides legal education for other lawyers. [https://www.wsba.org/for-legal-](https://www.wsba.org/for-legal-professionals/mcle/sponsors)  
18 [professionals/mcle/sponsors](https://www.wsba.org/news-events/decoding-the-law). It helps the public in, “decoding the law.”  
19 <https://www.wsba.org/news-events/decoding-the-law>. It runs a program to assist those with  
20 moderate means to find legal help. [https://www.wsba.org/connect-serve/volunteer-](https://www.wsba.org/connect-serve/volunteer-opportunities/mmp)  
21 [opportunities/mmp](https://www.wsba.org/connect-serve/volunteer-opportunities/mmp). It helps members of the public if they need to find a lost will.  
22 <https://www.wsba.org/for-the-public/find-legal-help/how-to-find-lost-will>. It provides  
23 information on how to attain a limited legal license, and also how to join the profession by  
24 going to law school. <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in->

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1 [wa/limited-license-legal-technicians; https://www.wsba.org/for-the-public/join/washington-law-](https://www.wsba.org/for-the-public/join/washington-law-schools)  
2 schools. The idea that the WSBA is something other than a state agency is in direct  
3 contravention to the manner in which it does business. For purposes of the OPMA, it is a  
4 state agency.

5           ***THE WSBA IS NOT, "A COURT"***

6           Even when an entity constitutes a state agency, it is exempt from the OPMA if it is "a  
7 court or the legislature." Defendant argues that because the Supreme Court has plenary  
8 authority over the WSBA, it is "the courts," and thus exempt from the definition of public  
9 agency.

10          The question is not whether the Supreme Court controls the Bar. It does. The  
11 Washington State Bar Association v. State, 125 Wn.2d 901, 890 P.2d 1047 (1995). The  
12 question is whether the WSBA is a court. It is not. Many different types of courts are created  
13 by statute. They include the Supreme Court, RCW 2.04, the Courts of Appeal, RCW 2.06,  
14 the Superior Court, RCW 2.08, Therapeutic Courts, and others Those statutory entitites are  
15 not public agencies subject to the OPMA. The WSBA BOG's hiring and firing decisions,  
16 however, are qualitatively different.

17          The deliberative and solitary nature of a court's decisionmaking process is  
18 inconsistent with the intent of the OPMA, and thus courts are excluded by the statute.  
19 Conversely, the executive-like, collaborative decisionmaking of the elected members of the  
20 BOG are precisely the types of decisions that should be subject to the OPMA. The WSBA  
21 BOG is not a court, is a public agency, and is thus subject to the OPMA.

22          **PLAINTIFF IS LIKELY TO PARTIALLY PREVAIL**

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1       A trial court has discretion to enter a preliminary restraining order. Findings and  
2 conclusions are necessary for a reviewing court to judge the trial court's use of its discretion.  
3 Turner v. Walla Walla (1974) 10 Wash.App. 401, 517 P.2d 985. A motion for preliminary  
4 injunction places a trial court in an awkward situation. Plaintiff is correct that, at a preliminary  
5 injunction hearing, a trial court does not resolve the merits of issues underlying requirements  
6 for permanent injunctive relief. Ameriquest Morag. Co. v. State Atty. Gen., 148 Wn.App. 145,  
7 199 P.3d 468 (2009). However the Court is required to decide whether Plaintiff is likely to  
8 prevail, deciding whether Plaintiff has a clear legal or equitable right, a reasonable fear that  
9 right will be invaded, and the potential for substantial harm. Id.  
10

11       Discovery at this point is limited. The Court has minimal access to facts. The parties  
12 have been restricted to a few weeks to present legal and factual information to the Court.  
13 Thus, the decision on preliminary injunction should not be read as a pre-judgment of the  
14 merits of the case. Confidence in the factual and legal conclusions below should all be  
15 tempered by the fact that no witnesses have testified, and the Court has not had the ability to  
16 judge anyone's credibility.  
17

#### *A Clear Legal or Equitable Right*

18       Defendant argues that Plaintiffs must first exhaust administrative remedies before  
19 seeking legal redress. *Defendant's Opposition* at 5. Ironically, Defendants cite to the  
20 doctrine of exhaustion of remedies which apply to public agencies – a designation they deny  
21 applies to the WSBA. There is no meaningful description of administrative remedies or  
22 appeals set forth in the WSBA bylaws. The bylaws require a complainant to ask the BOG to  
23 review its own decision. Even if the exhaustion of remedies doctrine applied to the WSBA, a  
24 petition to the BOG here is fruitless. The BOG cannot go back in time and conduct the  
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1 Littlewood decision differently. They cannot undo any alleged backroom dealing or horse  
2 trading.

3       The clear equitable right invaded by the BOG's alleged failure is Plaintiff WSBA  
4 member Beauregard's right to know the basis for a BOG decision that may affect him,  
5 including why an ED may have been terminated. The legal right is set forth in the OPMA,  
6 which requires an agency like the BOG to be transparent. Evidence exists from which this  
7 Court can determine they were not.  
8

9                   *A Well-Grounded Fear of Immediate Invasion of the Legal/Equitable Right*

10          A member of the WSBA (and the public at large) has a right to know why and how  
11 decisions that affect his or her ability to practice law are being made. Plaintiff argues that a  
12 decision regarding the hiring and maintaining of Ms. Littlewood as ED, was reversed without  
13 a truly open vote. Evidence of this exists in the video submitted with the Plaintiff's motion.  
14 Beauregard Declaration, Exhibit 5. Further evidence exists in the email exchange with a  
15 BOG member, wherein the BOG member made clear that the BOG does not intend to  
16 comply with the OPMA. Beauregard Declaration, Exhibit 3. Further corroborative evidence  
17 exists in the statements of WSBA members regarding the meeting. Beauregard Declaration,  
18 Exhibit 4. WSBA's defense to the substantive evidence consists primarily of the refrain that  
19 they followed the WSBA bylaws. Following the internal rules of an organization when those  
20 rules are in contravention to a state open meetings statute, is an insufficient defense.

22          Ms. Littlewood's continued vacation of the office without a public understanding of the  
23 reason for the firing constitutes a continuing invasion of Plaintiff's equitable right to  
24 understand and meaningfully participate in the hiring/firing decisions regarding the people  
25

1 who lead the organization that shapes the manner in which he is permitted to practice law.  
2 This is sufficient for a preliminary injunction.

3           *Could Result in Substantial Harm*

4           This prong of CR 65 is not well-defined or well-presented by Plaintiff. The harm to Ms.  
5 Littlewood is clear. If Ms. Littlewood were a party to this matter, the Court may have granted  
6 the relief requested by Plaintiff. The harm to Plaintiff is less clear. However, the potential  
7 harm to the WSBA's members and the public in not having a full understanding of how  
8 decisions are being made about the profession they chose to pursue and the profession for  
9 which they pay significant yearly dues to the WSBA, is sufficient for this Court to enter an  
10 order.

12           The harm suffered by Plaintiff is not the ability to choose who runs the WSBA. He  
13 never had that right. The harm Plaintiff suffered is the harm that comes with an inability to  
14 know why the person running the organization was fired, and the fear that comes with a likely  
15 future vote in violation of the OPMA to install a new ED.

16           All over this State every day, lawyers do incredibly difficult work for people who cannot  
17 resolve disputes on their own. They do this work with passion and commitment. The  
18 undersigned every single day sees thoughtful, reasonable, brilliant advocates do their work in  
19 part guided by the voice of the WSBA. It is a substantial harm when these professionals are  
20 not permitted to know or understand the very public decisions made by the Bar. It is fair for  
21 this Court to issue a preliminary injunction, maintain the status quo, and eventually allow the  
22 Washington State Supreme Court to make a final decision regarding the decisionmaking  
23 process of the BOG it oversees.

The status quo, however, is just that. The Court does not have the equitable power based on the record before it to reverse the termination of Ms. Littlewood. It does, however, have the equitable power to address the harm to Plaintiff. The Court will enjoin the WSBA BOG to comply with the OPMA as it relates to any correspondence among BOG members about the firing of Ms. Littlewood. The Court will enjoin the BOG to comply with the OPMA moving forward. The Court will enjoin the BOG to comply with the OPMA in any efforts to hire a new ED.

## **ORDER**

**IT IS HEREBY ORDERED** that Defendant's Motion for Preliminary Injunction is GRANTED IN PART. The WSBA BOG shall comply with the OPMA as it relates to any correspondence among BOG members about the firing of Ms. Littlewood. The BOG shall comply with the OPMA on all BOG decisions moving forward. The BOG shall comply with the OPMA in any efforts to hire a new ED.

**IT IS HEREBY FURTHER ORDERED** that the following findings shall be part of this order:

- 1) There are conflicting decisions of the Courts of Appeal and Supreme Court regarding whether the WSBA BOG constitutes a “public agency” under the OPMA;
- 2) This is a case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination;

DATED: April 11, 2019.

  
JUDGE ROGER ROGOFF